

HOUSE BILL 3202
By Kernell

AN ACT to amend Tennessee Code Annotated, Title 67 and Title 68, relative to funding Brownfield voluntary cleanup oversight and assistance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-2006(b)(1), is amended by adding the following as a new subdivisions (L) and (M):

(L) Any intangible expense or any interest expense related to or in connection with a transaction with one or more related members, whether direct or indirect, unless otherwise provided in subdivision (M). Nothing in this subdivision shall be construed to limit or negate the provisions of §§ 67-4-2014 or 67-4-2112 where deemed appropriate by the commissioner. For purposes of this subdivision and subdivision (M):

(i) "Intangible expense" means:

(a) Expenses related to, or in connection with, directly or indirectly, the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of intangible property to the extent such amounts are allowed as deductions or costs in determining federal taxable income for purposes of subsection (a);

(b) Losses related to or in connection with, directly or indirectly, factoring transactions or discounting transactions; and

(c) Other similar expenses and costs.

(ii) "Intangible property" means patents, patent applications, trade names, trademarks, service marks, franchise rights, copyrights, research, management, consulting or technical expertise, formulas, designs, patterns, processes, formats, accounts or notes receivable, and similar types of intangible assets.

(iii) "Interest expense" means amounts allowed as deductions under Section 163 of the Internal Revenue Code for purposes of determining federal taxable income, to the extent such expense is related to, or in connection with, directly or indirectly, the acquisition, maintenance, management, ownership, sale, exchange or disposition of intangible property but shall not include such amounts if:

(a) Both the business entity paying the interest and the business entity receiving the interest were also respectively the payer and payee of like interest payments between themselves prior to January 1, 2004; and

(b) The business entity paying the interest was incorporated, domesticated, qualified, or otherwise registered in Tennessee before January 1, 2004.

(iv) "Recipient" means the related member or related entity to whom a taxpayer makes an intangible expense or interest expense payment.

(v) "Related entity" means:

(a) A stockholder who is an individual, or member of the stockholder's family enumerated in Section 318 of the Internal Revenue Code, if the stockholder and members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock;

(b) A stockholder, or a stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock; or

(c) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of Section 318 of the Internal Revenue Code, if the taxpayer owns, directly, indirectly, beneficially or constructively, at least fifty percent (50%) of the

value of the corporation's outstanding stock. The attribution rules on Section 318 of the Internal Revenue Code shall apply for purposes of determining whether the ownership requirements described herein have been met.

(vi) "Related member" means an individual or entity that, with respect to the taxpayer during all or any portion of the taxable year, is a related entity, as defined in this subitem, is a component member as defined in Section 1563(b) of the Internal Revenue Code, or is an individual or entity to or from whom there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code.

(vii) "Subject to a tax based upon or measured by such member's or entity's net income or gross receipts" means that the related member or related entity recipient to whom an intangible expense or interest expense payment is made has included the payment in the computation of its net earnings or gross receipts subject to a tax based upon or measured by income or gross receipts in any other state of the United States or in any foreign country.

(M)

(i) A taxpayer shall be permitted to deduct an intangible expense or interest expense item in its entirety if the corresponding income item of the recipient related member or related entity is included in its income or gross receipts and is subject to a tax based upon or measured by such member's or entity's net income or gross receipts in a foreign country.

(ii) A taxpayer shall be permitted to deduct an intangible expense or interest expense item in its entirety if at least fifty percent (50%) of the corresponding income item of the recipient related member or related entity is apportioned to any other state or states of the United States and thus is subject to a tax based upon or measured by such member's or entity's net income or gross receipts in that state or states.

(iii) If less than fifty percent (50%) of the corresponding income item of the recipient related member or related entity is apportioned to any other state or states of the United States and is subject to a tax based upon or measured by such member's or entity's net earnings or gross receipts in that state or states, then, the amount of intangible expense payment or interest expense payment deductible by the taxpayer for Tennessee excise tax purposes shall be determined by multiplying the expense payment by the recipient's income tax or gross receipts apportionment ratio or ratios in the taxing state or states. The amount to be added back to federal taxable income in determining the taxpayer's excise tax base shall be the difference between the entire expense payment and the amount deductible by the taxpayer as an expense for Tennessee excise tax purposes.

(iv) For purposes of this subdivision, if the recipient related member or related entity is subject to a value added tax in any other state or states of the United States, then, the amount of corresponding income or gross receipts of the recipient related member or related entity deemed apportioned to that state or states and subject to a tax based upon or measured by such member's or entity's net income or gross receipts in such state or states shall be determined as if the state or states having a value added tax had an apportionment formula and excise tax exactly like the apportionment formula and excise tax that would be applicable under Tennessee's excise tax law.

SECTION 2. Tennessee Code Annotated, Section 67-4-2006(b)(2), is amended by adding the following as a new subdivision (N):

(N) Any item of income included in the computation of a taxpayer's taxable income for purposes of subsection (a), that, due to the provisions § 67-4-2006(b)(1)(L) or (M), has not been allowed as an expense deduction for purposes of the excise tax levied by this part.

SECTION 3. Tennessee Code Annotated, Title 67, Chapter 4, Part 20, is amended by adding the following as a new, appropriately designated section:

§ 67-4-2019.

Notwithstanding any other law to the contrary, all new revenues generated by amendments to the excise tax imposed by the provisions of this act shall be earmarked and allocated exclusively to the Brownfield voluntary cleanup oversight and assistance fund created in § 68-212-224(c).

SECTION 4. The provisions of this act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to tax years beginning after June 30, 2004.